

**Notice of Allowability**

Application No.

09/716,392

Examiner

Callie E. Shosho

Applicant(s)

HOUMAN ET AL.

Art Unit

1714

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment file 11/17/03.
2. ☒ The allowed claim(s) is/are 1,4-13,18 and 19.
3. ☒ The drawings filed on 20 November 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No. _____  | 7 <input type="checkbox"/> Examiner's Amendment/Comment                             |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|   | 9 <input type="checkbox"/> Other _____  |

Callie E. Shosho  
Primary Examiner  
Art Unit: 1714

**DETAILED ACTION**

1. The present claims are allowable over the "closest" prior art Takaoka et al. (U.S. 6,063,4721) and Anderson et al. (U.S. 6,180,037) for the following reasons:

Takaoka et al. disclose a composition comprising 0.5-18% resin and 70% or less aggregate particles such as calcium carbonate which have particle size of 0.03-2 mm wherein the aggregate particles form a layer of thickness of 0.01-3 mm or 0.004-0.118 inches. However, there is no disclosure in Takaoka et al. that the composition is self-gauging as required in all the present claims. Further, there is no disclosure that the aggregate forms layer of aggregate particles having from about 200 to about 100 particles per square inch.

Anderson et al., which is drawn to sheets prepared from composition comprising binder and aggregate particles, disclose that particle packing is a primary factor for designing the desired requirements for the final product such as workability, stability, shrinkage, bulk density, elasticity, etc. and further disclose that the particle packing density of the aggregate greatly effects the rheology of the composition. For instance, the more closely packed the particles, the less liquid required to fill the interstitial space between the particles which in turn effects the theological properties of the composition. However, there is no disclosure of aggregate layer having thickness from about 0.02 inches to about 0.05 inches and having from about 200 to about 1000 particles per square inch. Further, Anderson et al. is drawn to composition that is used to prepare sheets. There is no disclosure of self-gauging composition as required in all the present claims.

As stated above, there is no disclosure in Takaoka et al. that the composition is self-gauging. Further, while Takaoka et al. disclose the use of aggregates that possess particle size of

0.03-2 mm and thus broadly overlaps the presently claimed particle size, Takaoka et al. do not disclose any criticality with respect to the particle size. This is especially significant in light of applicants' 1.132 declaration filed 3/14/03. In the declaration, the composition of example 10 of Takaoka et al., which utilizes aggregate having particle size of 700 microns, which is outside the scope of the present claims but within the scope of Takaoka et al., is applied to gypsum wallboard using trowel as described on page 10 of the present specification. As set forth on page 4 of the declaration, it was determined that the composition of Takaoka et al. is not self-gauging and lacks any sort of self-gauging property. This is in direct contrast to the present claims that require a self-gauging composition. Further, it is noted as set forth in paragraphs 9-10 of the declaration, the composition of Takaoka et al. has inferior abuse resistance as compared to the compositions of the present invention.

Thus, it is clear that Takaoka et al. and Anderson et al., either alone or in combination, do not disclose or suggest the present invention.

In light of the above, it is clear that the rejection of record are untenable and so, the present claims are passed to issue.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Callie E. Shosho whose telephone number is 703-305-0208. The examiner can normally be reached on Monday-Friday (6:30-4:00) Alternate Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Callie E. Shosho  
Primary Examiner  
Art Unit 1714

CS  
12/4/03